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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

Nos. 638, 639 and 641

FLORIDA EAST COAST RAILWAY COMPANY, *Appellant,*

v.

UNITED STATES OF AMERICA, *et al.,* *Appellees.*

CITY OF TAMPA, FLORIDA, *Appellant,*

v.

UNITED STATES OF AMERICA, *et al.,* *Appellees.*

SOUTHERN RAILWAY SYSTEM, *Appellant,*

v.

UNITED STATES OF AMERICA, *et al.,* *Appellees.*

ON APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

SUPPLEMENTAL MEMORANDUM IN RESPONSE TO NEW MATERIAL IN APPELLANTS' REPLIES

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We ordinarily would hesitate at this time to burden the Court with a further filing in this case, the docket in which has already been the recipient of much more material than the well-settled legal issues involved would require. But a contention made for the first time in reply by certain of

the appellants (FEC Rep. 3-5; Southern Rep. 7 n. 4) prompts this brief supplemental memorandum.

Appellants' extraordinary contention is that the merger applicants, by agreement with the representatives of their employees, may have voluntarily given away a substantial amount of the savings to be realized from the merger, and that the possibility of this donation vitiates the Commission's findings with respect to certain of the benefits to be obtained from the merger. This contention is completely without merit; and even an exploratory acceptance of it would seriously hamper the smooth functioning of labor relations in the railroad industry—particularly as the industry reduces the number of its units through the unifications contemplated by Section 5 of the Interstate Commerce Act—and would run counter to the policy of the Railway Labor Act.

Section 5(2)(f) of the Interstate Commerce Act, relating to rail mergers and consolidations, provides that:

> "In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order."

The Act makes it perfectly plain, in line with the national labor policy of encouraging agreed-on arrangements

of labor-management relations,[1] that, notwithstanding "any of the provisions of this Act," with respect to a merger "an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees." (§ 5(2)(f), final sentence)

What the merger applicants did here was to enter into an agreement with their employees which, with certain specified exceptions, continued the protections specified in the statute for a period longer than the four years required by the statute, or the five years with respect to which the Commission now characteristically grants employee protection.[2] (See, *e.g., New Orleans Union Passenger Terminal Case,* 282 I.C.C. 271 (1952); *Southern R. Co.-Control-Central of Georgia R. Co.,* 317 I.C.C. 557, 729 (1962-63).) The protections now are to continue until employees are separated by resignation, death, retirement, dismissal for cause, failure to work by reason of disability, or discipline, or failure to exercise seniority rights. But the agreement did not stop there. In exchange for this concession—that the protective provisions would extend to employees beyond the fourth or fifth year after the merger—the merger applicants received the highly valuable right to make reassignments of employees across craft lines and from place to place throughout the entire merged system, commencing on the effective date of the merger.[3] Moreover, that agreement also gave the merger

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[1] See, *e.g., California* v. *Taylor,* 353 U.S. 553, 559 (1957).

[2] See, generally, § 2 of the Agreement. The full text of the Agreement is appended as Appendix I.

[3] See, primarily, § 3 of the Agreement. We have appended the entire text of the Agreement as Appendix I hereto. We note that the FEC Reply simply appended a summary description of the

applicants the right to combine seniority rosters and seniority districts—a right which is most important in connection with the gaining of the maximum possible savings in connection with the merger. These were rights which the carriers' managements did not possess under previous agreements and do not now possess apart from the recent agreement: as is well known, the inflexibility of railroad labor costs because of restrictive work practices, craft lines, seniority rosters, and work rules is the principal problem of railroad management in the railway labor area. The arrangement which the carriers have negotiated, by greatly increasing the managerial flexibility of the Merged Carrier, will enable the Merged Carrier to take a greater advantage of the potential savings of the merger *from the effective date of the merger*—not for the first time in the fifth year after the merger or in the sixth year thereafter. The agreement provides a measure of flexibility that would have been important enough in the unmerged operations of the applicants, but which acquires a special significance in the context of the merger.

To be sure, as appellants point out, the Commission quite properly declined to impose highly burdensome long-term "attrition" conditions on the Merged Carrier when those conditions, *without reciprocal concessions,* were proposed by railway labor in the merger hearings. The Commission then stated that "we are unable to conclude that conditions requiring the retention of unnecessary employees in unnecessary positions would be consistent with the public

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Agreement in the form contained in "The Atlantic Coast Line News," a periodical published for the "information of the employees of The Atlantic Coast Line Railroad Company." This summary did not stress the corresponding benefits which the Merged Carrier is to receive from the Agreement.

interest or sound business policy. The imposition of such conditions would unduly restrict carriers in the establishment of more economic operations. . . ." 321 I.C.C., at 201. The Commission's language ran to the conditions, *unaccompanied by any reciprocal concessions,* as proposed by the brotherhoods for unilateral imposition by the Commission on the merger. The brotherhoods' proposal contained none of the present liberal provisions for reassignment and for management flexibility, eliminating the necessity for the "retention of unnecessary employees in unnecessary positions" and permitting the carriers to effect the "establishment of more economical operations," which are provided for in the present agreement.

Directly opposite to the contentions of appellants, then, are the facts. Rather than reduce savings from labor costs, the agreement will enhance them. The record shows (Exhibit H-37, Study 10, Schedule A) that the normally-expectable attrition during the five-year period following the merger exceeds the number of personnel to be displaced by the merger by 1,413. Under the Commission's prescribed protective conditions, the displaced employees would have been given full protection; the record also shows that 969 of them could not have been used, however, in their own craft or class and hence would have had to be compensated in accordance with the prescribed conditions without performing any beneficial services because of the inability of the carrier to assign them to useful positions. Under the terms of the present agreement, however, these employees could be transferred to necessary positions outside their craft and class to fill other available jobs created by attrition.

The Commission's rejection, as not in the public interest, of a proposed mandatory "attrition" set of conditions,

then, created a "base" from which the carriers were able to negotiate an overall settlement that would preserve the necessary flexibility which would permit them to take immediate advantage of the potential savings in the merger. Certainly it is to be expected that an agreement "tailor-made" by labor and management will provide a more desirable charter for the labor-management relations of the Merged Carrier than a set of labor-protective conditions unilaterally imposed by the Commission. Thus it is that a number of rail carriers have entered into agreements with the brotherhoods under the provisions of the final sentence of Section 5(2)(f), providing arrangements for their labor relations to govern after the effectiveness of a transaction approved by the Commission under Section 5. This was the case in the mergers involved in *Norfolk & W. R. Co. & New York, C. & St. L. R. Co.-Merger,* 324 I.C.C. 1 (1964); *Norfolk & W. R. Co. Merger,* 307 I.C.C. 401 (1959) (Virginian merger); and *Pennsylvania R. Co.-Merger-New York Cent. R. Co.,* 327 I.C.C. 475 (1966).

At the time the present agreement was reached (pending appeal to this Court, following the filing of the Jurisdictional Statement in No. 640), the representatives of railway labor were no longer actively pursuing the legal issue whether the Commission erred in failing to require "attrition" conditions. The only questions they were raising were entirely unrelated to "attrition" conditions. (See Jurisdictional Statement, No. 640, pp. 3-4.) Thus, the overall arrangement reached between the merger applicants and railway labor—which resulted in a settlement of the unrelated points which were then being pressed on appeal—did not represent a compromise of a preserved position by railway labor that attrition conditions should be imposed without any counterbalancing flexibility in management discretion over the affairs of the Merged Carrier.

To say that a voluntary settlement of the labor relations to prevail upon the consummation of a railway merger vitiates the Commission's order approving the merger flies in the face of the policy established by the last sentence of Section 5(2)(f) encouraging such voluntary settlements. If they vitiated the Commission's order, such agreements would not be entered into. Since the savings to result from a rail unification are often a principal basis of the Commission's approval (see, *e.g., Texas* v. *United States,* 292 U.S. 521, 530-31 (1934); *Seaboard Air Line R. Co.* v. *Daniel,* 333 U.S. 118, 124-25 (1948); *Louisville & N. R. Co. Merger,* 295 I.C.C. 457, 502-03 (1957); *Duluth, S. S. & A. R. Co.,* 312 I.C.C. 341, 360 (1960)), it follows that if such an agreement vitiates a Commission order here, it would almost invariably vitiate the Commission's orders, contrary to the policy expressed in the final sentence of Section 5(2)(f). The result would not only frustrate the procedure wisely contemplated by this provision, but would impair the whole policy of the Railway Labor Act for the continuing voluntary adjustment of railway labor-management relations.[4] This is not the first rail merger case in which an overall labor settlement was not made final until after the rendition of the Commission's report.[5] Surely, given the

[4] The Railway Labor Act imposes upon carriers and employees the duty to "exert every reasonable effort" to enter into collective bargaining agreements and to continue their effectiveness, as a means of ordering their industrial relations. See Section 2 *First,* 45 U.S.C. § 152 *First.*

[5] In the Pennsylvania-New York Central merger (*Pennsylvania R. Co.-Merger-New York Cent. R. Co.,* 327 I.C.C. 475 (1966)), there was an agreement entered into with the brotherhoods under the final sentence of § 5(2)(f) prior to the Commission's order, and substantial modifications in the agreement were made by further agreement under that authority after the Commission's order.

backdrop of the national policy for the voluntary self-adjustment of these matters, it can be assumed that the carriers will not voluntarily surrender the public and private benefits to be obtained from the merger by making inordinate concessions to their employees, whether before the effective date of the merger by an agreement under the last sentence of Section 5(2)(f), or by an agreement entered into under the normal processes of the Railway Labor Act after the effective date of the merger.

Significantly, the Commission—which has an interest in the integrity of its own processes—has made no suggestion that the basis for its order has been vitiated because of any alleged subsequent conduct by the merger applicants voluntarily surrendering some of the savings to be effected upon the merger.

For the reasons stated, the eleventh-hour contention of appellants made directly in this Court that the merger applicants have voluntarily surrendered the benefits of the merger and vitiated the Commission's order is plainly insubstantial.

Respectfully submitted,

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December, 1966

APPENDIX I

AGREEMENT
FOR PROTECTION OF EMPLOYEES
IN EVENT OF MERGER OF
SEABOARD AND COAST LINE RAILROADS

WHEREAS, the Seaboard Air Line Railroad Company and the Atlantic Coast Line Railroad Company (hereinafter sometimes referred to individually as Seaboard and Coast Line or collectively as the Carriers) have filed a joint application with the Interstate Commerce Commission (hereinafter called the Commission) for authority under Section 5(2) of the Interstate Commerce Act to merge the properties and franchises of Coast Line into Seaboard for ownership, management, and operation of the properties now separately owned and operated, and for certain other authority incidental thereto, as more fully described in Finance Docket's No. 21215;

AND WHEREAS, the said joint application has been approved by the Commission, but now is subject to review by the courts of the United States;

AND WHEREAS, the approved Plan of Merger dated May 19, 1960, between the Carriers provides that the corporation to survive the merger will be a corporation of the Commonwealth of Virginia with its name changed to "Seaboard Coast Line Railroad Company" (hereinafter referred to as the Merged Company) which will assume and be bound by the collectively bargained labor agreements of both Seaboard and Coast Line;

AND WHEREAS, upon court approval of the Commission's orders it is the intent and purpose of Seaboard and Coast Line to effectuate the merger, which may or will

have adverse effect upon their employees represented by the labor organization parties hereto;

AND WHEREAS, the international and national labor organizations signatory hereto are the authorized and recognized representatives of the majority of the employees of Seaboard and Coast Line and have intervened on behalf of said employees through the Railway Labor Executives' Association in opposition to the said merger in proceedings before the Commission and in the courts;

AND WHEREAS, Section 5(2)(f) of the Interstate Commerce Act provides:

> "As a condition of its approval, under this paragraph (2) of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad

and the duly authorized representative or representatives of its or their employees."

AND WHEREAS, pursuant to the provisions of the Railway Labor Act, as amended, and in accordance with the last sentence of Section 5(2)(f) of the Interstate Commerce Act above quoted, the parties signatory hereto have reached agreement respecting the protection to be afforded employees of the Seaboard and Coast Line;

NOW, THEREFORE, it is mutually agreed as follows:

Section 1.

The fundamental scope and purpose of this Agreement is (a) to provide for the protection of defined employees of Seaboard and Coast Line as herein set forth, (b) to expedite the changes in services, facilities and operations involved in such merger, and (c) to prescribe the procedures by which existing agreements between the parties shall be modified and consolidated to conform with the changes in services, facilities and operations involved in such merger.

Section 2.

(a) For the purposes of this Agreement the term "present employees" is defined to mean all employees of Seaboard or Coast Line who render any compensated service between the effective date of this Agreement and the date of consummation of the corporate merger (both dates inclusive).

(b) On the date the said corporate merger of the Coast Line into Seaboard is consummated the Merged Company will take into its employment all employees of Seaboard and Coast Line who were employees on the effective date of this Agreement, or subsequent thereto, up to and in-

cluding the date the merger is consummated, and who are willing to accept such employment. None of the present employees of either of the said carriers shall be deprived of employment or placed in a worse position with respect to compensation, rules, working conditions, fringe benefits or rights and privileges pertaining thereto at any time during such employment.

(c) In the event two or more employees, including those on leave-of-absence or sick leave, have employment rights to the same job, the senior employee upon return to his position shall be entitled to preservation of employment and the employee temporarily occupying such position shall revert to whatever rights his seniority and this Agreement otherwise entitle him.

(d) The Merged Company shall also take over, assume and continue the employment relationship of all employees on furlough or leave-of-absence and preserve their rights and equities as they may exist as of the effective date of this Agreement or subsequent thereto up to and including the date the corporate merger is consummated subject, however, to the transfer of work and employees as hereinafter set forth.

(e) An employee shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation, rules, working conditions, fringe benefits, or rights and privileges pertaining thereto (1) in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, (2) or failure to work due to disability or discipline, (3) or failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, (4) or reductions in forces due to seasonal requirements,

provided, however, that employees furloughed due to seasonal requirements shall not be furloughed in any twelve-month period for a greater period than they were furloughed during the twelve months preceding the date the merger is consummated.

(f) In the event of a decline in the Merged Company's business in excess of 5% in the average percentage of both railway operating revenues and total ton miles revenue-freight in any 30-day period compared with the average of the same period for the years 1964 and 1965, a reduction in forces in the crafts represented by each of the organizations signatory hereto may be made at any time during a 30-day period following the period of decline below the number of employees entitled to preservation of employment under this Agreement to the extent of one percent for each one percent that such decline exceeds 5%. The average percentage of decline shall be the total of the percent of decline in railway operating revenues and percent of decline in total ton miles revenue-freight divided by two. Advance notice of any such force reduction shall be given as required by the current schedule agreements of the organizations signatory hereto. Upon restoration of the Merged Company's business following any such force reduction, employees entitled to preservation of employment must be recalled in accordance with the same formula within 15 calendar days.

(g) Notwithstanding other provisions of this Agreement, the Merged Company shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the posi-

tions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed. When forces have been so reduced and thereafter as operations are restored upon termination of the emergency, employees entitled to preservation of employment must be recalled. In the event the Merged Company is required to make force reductions because of the aforesaid emergency conditions, it is agreed that any decline in railway operating revenues and total ton miles revenue-freight resulting therefrom shall not be included in any computation of a decline in the Merged Company's business pursuant to the provisions of the preceding paragraph.

(h) None of the provisions of this Agreement are applicable to employees temporarily hired for work on non-recurring projects between the effective date hereof and the date of the consummation of the merger.

(i) Seaboard and Coast Line agree to furnish rosters (which shall be attached as Appendix B to this Agreement) of all employees entitled to preservation of employment, compensation, and fringe benefits as of the effective date of this Agreement, and also separate rosters (which shall be attached as Appendix C) of all employees on furlough or leave-of-absence, each of which rosters shall also set forth the Carrier by which the employees are employed and the labor organization party to this Agreement representing such employees. The Carrier will furnish, upon request, the additional information specified in Appendices D and E to this Agreement. Seaboard and Coast Line further agree that the said rosters are subject to revision as necessary to include any employees to be added or deleted from said rosters between the effective date of this

Agreement and the date the corporate merger is consummated.

Section 3.

(a) In consideration of the foregoing employee benefits the Merged Company shall, subject to compliance with the provisions of Appendix F attached hereto, be entitled to transfer the work of the employees protected hereunder throughout the merged or consolidated system and the labor organizations will, subject to provisions contained in the Memorandum of Understanding attached hereto as Appendix G, enter into implementing agreements providing for the transfer and use of employees and allocation or rearrangement of forces made necessary by changes for which protection is herein provided and the employees, their organizations and the Carriers will cooperate to that end. The implementing agreements to be negotiated with respect to the transfer and use of employees and allocation or rearrangement of forces shall enable the Merged Company to transfer such employees and rearrange forces without liability to furloughed employees who may be affected by such transfer. Employees who are unable to secure employment in their own craft or class may be transferred on a temporary basis to other reasonably comparable employment for which they are physically and mentally qualified which does not require a change in their place of residence, if such transfer does not infringe upon the employment rights of other employees under existing schedule agreements. Any employee so transferred on a temporary basis shall retain the option of returning to his craft or class as employment opportunities in such craft or class become available.

(b) The Merged Company will take over and assume all contracts, schedules and agreements between Seaboard, Coast Line, and the labor organizations signatory hereto concerning rates of pay, rules and working conditions and fringe benefits in effect at the time of consummation of the said merger and will be bound by the terms and provisions thereof, and such agreements will be merged into new agreements through negotiations covering all employees of the Merged Company in each craft with consolidation of seniority rosters and seniority districts for each class and craft of employees.

(c) If after the merger there remains a surplus of employees, any present employee 60 years of age or over may at the option of the Merged Company be offered in seniority order the opportunity to resign and accept a retirement allowance based upon the age of such employee as of his nearest birthday on the date such allowance is offered. The amount of such allowance shall be:

Age at Nearest Birthday	*Allowance*
64 and under	12 months' pay
65	10 months' pay
66	8 months' pay
67	6 months' pay
68 and over	4 months' pay

The acceptance of the retirement allowance shall be at the option of the employee. Acceptance shall be in writing, shall be irrevocable and shall be received by the Supervisor offering the allowance within fifteen calendar days of receipt of such offer.

An employee who elects to accept and is awarded such allowance thereupon terminates his employment relationship with the Merged Company, and the effective date of such termination shall be that date specified in the offer by the Merged Company. A minimum of fifteen calendar days' advance notice of the date of termination of employment shall be given the employee offered the retirement allowance.

The retirement allowance herein provided will be in addition to any vacation allowance to which such employee is entitled as of the date of his retirement but shall be in lieu of all other benefits and protections to which such employee may be entitled under this Agreement.

Section 4.

In event any dispute or controversy arises between Seaboard, Coast Line, or the Merged Company and any labor organization signatory to this Agreement with respect to the interpretation or application of any provisions of this Agreement, or of any implementing agreement entered into between the Merged Company and individual labor organizations which are parties hereto, pertaining to the said merger or related transactions, which cannot be settled by said Carriers and the labor organization or organizations involved within thirty days after the dispute arises, such dispute may be referred by either party to an arbitration committee for consideration and determination. Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee, each party shall, within ten days, select a member of the arbitration committee and the members thus chosen shall, if they cannot agree on the disposition of the dispute within ten days, endeavor to select a

neutral member who shall serve as Chairman, in which event the compensation and expenses of the Chairman shall be borne equally by the parties to the proceeding. All other expenses shall be borne by the party incurring them. Should the members designated by the parties be unable to agree upon the appointment of the neutral member within ten days, either party may request the National Mediation Board to appoint the neutral member, whose compensation and expenses shall then be paid in accordance with existing law. If any party fails to select its member of the arbitration committee within the prescribed time limit, the representative of such party signatory to this Agreement or his designated representative shall be deemed to be the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. The decision of the majority of the arbitration committee shall be rendered within thirty days after selection of the committee, unless the parties mutually agree to a further extension and shall be final and binding, except that in any case in which there is an unequal number of carrier and organization members on the arbitration committee, the decision of the neutral member shall be final and binding.

Section 5.

In the event merger or control of other carriers not now involved in the aforesaid merger proceedings shall be ordered by the Commission, this Agreement shall be subject to amendment by the parties so as to provide the employee benefits set forth in Sections 1 through 4 hereof to the employees of any such carrier controlled by or merged into the Merged Company.

Section 6.

Except as specifically provided herein, this Agreement supersedes the employee protective conditions prescribed by the Interstate Commerce Commission in Finance Docket 21215 with respect to the merger of the Seaboard and the Coast Line and supersedes the application of the Washington Job Protection Agreement, except that a Seaboard or Coast Line employee not entitled to preservation of employment under this Agreement and affected by the merger who ordinarily would be provided protection under the Washington Job Protection Agreement will be covered by the Washington Job Protection Agreement.

Section 7.

(a) The foregoing represents an agreed settlement of protection of the interests of the employees of the Seaboard and Coast Line in the said merger. Said agreed settlement of protective benefits is made on behalf of said employees by their authorized and recognized bargaining representatives signatory hereto pursuant to Section 5(2)(f) of the Interstate Commerce Act and applicable provisions of the Railway Labor Act, as amended, and shall become applicable only in the event of the proposed merger and consummation thereof. It shall be considered and construed as a separate agreement between the Seaboard, Coast Line and each of the labor organizations signatory hereto.

(b) In the event the Commission's approval of the merger of the Seaboard and the Coast Line is before a court on appeal at the time this Agreement is executed, the Railway Labor Executives' Association will inform such court that any differences as to employee protection

between the Carriers and the employees represented by the Railway Labor Executives' Association have been resolved.

Section 8.

It is understood and agreed that the provisions of this Agreement shall be for the benefit only of the employees of the Seaboard and Coast Line represented by the labor organizations parties hereto.

Section 9.

The effective date of this Agreement shall be August 1, 1966.

APPENDIX A

SUMMARY OF APPENDICES

*Appendix B—Rosters of all employees entitled to preservation of employment, compensation and fringe benefits.

*Appendix C—Rosters of all employees on furlough or leave-of-absence, setting forth the Carrier by which the employees are employed and the labor organization representing such employees.

*Appendix D—Memorandum of Understanding regarding employment information to be furnished upon request and computations respecting compensation due non-operating employees under this agreement.

*Appendix E—Memorandum of Understanding regarding employment information to be furnished upon request and computations respecting compensation due operating employees under this agreement.

Appendix F—Memorandum of Understanding regarding notices of changes under this agreement.

Appendix G—Memorandum of Understanding regarding moving expenses and lump sum separation allowances.

*Appendix H—Memorandum of Understanding regarding effect of this agreement on negotiation of national agreements.

*Appendix I—Memorandum of Understanding regarding supervisory, excepted personnel, and union organization representatives.

Appendix J—Letter of Intent.

* * * * *

*Omitted in this printing.

APPENDIX F

MEMORANDUM OF UNDERSTANDING

RE

NOTICES OF CHANGES UNDER THIS AGREEMENT

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employees in Event of Merger of Seaboard and Coast Line Railroads, effective August 1, 1966, hereinafter called the Agreement.

The Carriers shall give at least ninety (90) days written notice of intended changes contemplated because of the merger of the Seaboard and Coast Line by posting a notice on bulletin boards convenient to interested employees of each carrier or of the Merged Company and by sending registered or certified mail notice to the General Chairmen representing the interested employees. Such notice shall contain a full and adequate statement of the proposed changes, including an estimate of the number of employees of each class that will be affected by such intended changes. The date and place of a conference between carrier and employee representatives for the purpose of reaching agreements with respect to the application thereto of the terms and conditions of the Agreement to which this Appendix is a part, shall be agreed upon within ten (10) days after the receipt of said notice, and conferences shall commence within thirty (30) days from date of such notice. In event of failure to reach an agreement within sixty (60) days from commencement of such conferences, the dispute

may be submitted by either party for a final decision in accordance with Section 4 of the Agreement to which this Appendix is a part. The issues submitted for determination shall not include any question as to the right of the carrier to make operational changes but shall be confined to the manner of implementing the contemplated operational changes with respect to the transfer and use of employees and the allocation or rearrangement of forces made necessary by the contemplated change.

APPENDIX G

MEMORANDUM OF UNDERSTANDING RE MOVING EXPENSES AND LUMP SUM SEPARATION ALLOWANCES

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employees in Event of Merger of Seaboard and Coast Line Railroads, effective August 1, 1966, hereinafter called the Agreement.

In case of any transfers or rearrangement of forces for which an implementing agreement has been made, any employee who is required by the Merged Company pursuant to said implementing agreement to transfer to a new point of employment requiring him to move his residence shall be entitled to the benefits provided in Sections 10 and 11 of the Washington Job Protection Agreement, notwithstanding anything to the contrary contained in said sections, and in addition to such benefits shall receive a transfer allowance of $400.00 and five working days instead of the "two working days" provided by Section 10(a) of said Washington Agreement.

Such employee with 15 years of service or more may elect to resign in lieu of making the required transfer as aforesaid, and his resignation shall be effective as of the date the transfer would have been made. He shall be given (in lieu of all other benefits and protections to which he may have been entitled under the Agreement) a lump sum separation allowance which shall be computed in accordance

with the schedule set forth in Section 9 of the Washington Job Protection Agreement.

This Memorandum of Understanding is applicable to the Seaboard and Coast Line employees represented by the organizations signatory to the Agreement of which it is a part and supersedes all existing agreements which may be in conflict herewith.

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APPENDIX I

MEMORANDUM OF UNDERSTANDING
RE
SUPERVISORY, EXCEPTED PERSONNEL AND UNION ORGANIZATION REPRESENTATIVES

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employees in Event of Merger of Seaboard and Coast Line Railroads, effective August 1, 1966, hereinafter called the Agreement.

If, subsequent to the effective date of the Agreement, officials, supervisory or fully excepted personnel or union organization representatives are forced to exercise seniority rights in a craft or class of employees protected under said Agreement, then, during the period such seniority is exercised, such officials, supervisory or fully excepted personnel or union organization representatives shall be entitled to the same protection afforded by the said Agreement to employees in the craft or class in which such seniority is exercised, and no employee subject to said Agreement shall be deprived of employment or adversely affected with respect to compensation, rules, working conditions, fringe benefits, or rights and privileges pertaining thereto, by the return of the official, supervisory, or fully excepted employee or union organization representative to work under the schedule agreement.

APPENDIX J

LETTER OF INTENT

This Letter of Intent is attached to and made a part of the Agreement for Protection of Employees in Event of Merger of Seaboard and Coast Line Railroads, effective August 1, 1966.

Employees who are unable to secure employment in their own craft or class and who are offered transfer to other reasonably comparable employment as provided for in Section 3(a) and who decline to move their place of residence will have the compensation due them as prescribed in Appendices D and E reduced to the extent of all earnings from other employment.